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Thomas Genova, Esq. (TG4706)  
Andrea B. Malin, Esq. (AM4424)

**DATE: AUGUST 19, 2010**  
**TIME: 9:30 A.M.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
POUGHKEEPSIE DIVISION

-----X  
IN RE

SHAN E. VITARIUS and  
JESSICA J. VITARIUS,

**CHAPTER 13**  
**CASE NO. 09-35840(CGM)**

Debtors.

-----X

**NOTICE OF PRESENTMENT OF DEBTORS' MOTION  
TO AVOID JUDICIAL LIEN**

**S I R S :**

**PLEASE TAKE NOTICE** that the undersigned, being the attorneys for the above-referenced debtor, will move the above-named Court located at 355 Main Street, Poughkeepsie, New York, 12601, on the **19<sup>th</sup>** day of **August, 2010** at **9:30 a.m.**, pursuant to Bankruptcy Rule 9014, for an Order pursuant to 11 U.S.C. §522(f)(1) voiding the fixing of certain judicial lien on the debtors' interest in real property located at 89 Dashville Road, New Paltz, New York, to the extent that such lien impair the debtors' exemption in said real property, and for such other and further relief as to the Court may seem just and proper.

**PURSUANT TO BANKRUPTCY RULE 9014 AND LOCAL  
BANKRUPTCY RULES 9013-4 and 9074-1(c), IF YOU INTEND TO OPPOSE THE  
MOTION, YOU MUST SERVE ON THE DEBTOR'S COUNSEL AND FILE WITH THE  
CLERK OF THE BANKRUPTCY COURT, WRITTEN OPPOSITION TO THE  
MOTION NOT LATER THAN THREE(3) BUSINESS DAYS PRIOR TO THE RETURN**

**DATE OF THIS MOTION. IN EVENT NO WRITTEN OPPOSITION IS SERVED AND  
FILED, NO HEARING ON THE MOTION WILL BE HELD BEFORE THE COURT ON  
THE RETURN DATE, AND THE COURT WILL CONSIDER THE MOTION AS  
UNOPPOSED.**

Dated: Wappingers Falls, New York  
July 27, 2010

GENOVA & MALIN  
Attorneys for the Debtors

By: /s/ Andrea B. Malin  
ANDREA B. MALIN, ESQ. (4424)  
Hampton Business Center  
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(845) 298-1600

TO: JEFFREY L. SAPIR, ESQ.  
399 Knollwood Road, Suite 102  
White Plains, New York 10603

SHAN E. & JESSICA J. VIATRIUS  
89 Dashville Road  
New Paltz, NY 12561

CITIBANK  
c/o PRA Receivables Management, LLC  
PO Box 41067  
Norfolk, VA 32541  
Attn: President

CITIBANK  
701 East 60<sup>th</sup> Street  
North Sioux Falls, SD 57117  
Attn: President

PETER T. ROACH & ASSOCIATES  
Attorneys for CitiBank  
115 Eileen Way Suite 103A  
Syosset, NY 11791  
Attn: Peter T. Roach, Esq.

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
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IN RE

SHAN E. VITARIUS and  
JESSICA J. VITARIUS,

**CHAPTER 13**  
**CASE NO. 09-35840(CGM)**

Debtors.

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**AFFIRMATION IN SUPPORT OF MOTION TO**  
**AVOID LIEN**

**TO THE HONORABLE CECILIA J. MORRIS, UNITED STATES BANKRUPTCY**  
**JUDGE:**

ANDREA B. MALIN duly admitted to practice law before this Court, alleges  
upon information and belief:

1. On April 7, 2010, the debtors filed a Petition for Reorganization under Chapter  
13 of the Bankruptcy Code.

2. On or about July 22, 2010, Richard R. Steffens performed a Comparative  
Market Analysis of said property, which it determined to have a fair market value of TWO  
HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$235,000.00). Annexed hereto as  
Exhibit "A" is a copy of said CMA.

3. At the time of the filing of the petition herein, said property was  
encumbered by a first mortgage held by FIRST HORIZON which has a principal balance of  
approximately TWO HUNDRED THIRTY-FIVE THOUSAND TWO HUNDRED NINETY

DOLLARS AND NINETY-SIX CENTS (\$235,290.96). (See Claim No. 14 filed with this Court).

4. At the time of the filing of the petition herein, the property was encumbered by a second mortgage lien held by CITIZEN'S BANK which has a principal balance of TWENTY-THREE THOUSAND THREE HUNDRED SIX DOLLARS AND EIGHTY-EIGHT CENTS (\$23,306.88). (See Claim No. 2 filed with this Court).

5. At the time of the filing of the petition herein, the property was encumbered by a secured line of credit held by KEY BANK which has a principal balance of EIGHTEEN THOUSAND SEVEN HUNDRED TWENTY-SEVEN DOLLARS AND SIX CENTS (\$18,727.06). (See Claim No. 4 filed with this Court).

6. The property is encumbered by a pre-petition judgment, held by CITIBANK ("CITI") entered on January 21, 2009, in the sum of TWENTY-THREE THOUSAND NINE HUNDRED TWENTY-NINE DOLLARS AND THIRTY-SIX CENTS (\$23,929.36). Annexed hereto as Exhibit "B" is a copy of the judgment.

7. Section 522(f)(1) of the United States Bankruptcy Code allows the debtors to avoid the fixing of judicial liens "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled...."

8. As the first and second mortgages, the secured line of credit and lien are unavoidable encumbrances totaling the sum of THREE HUNDRED ONE THOUSAND TWO HUNDRED FIFTY-THREE DOLLARS AND NINETY-NINE CENTS (\$301,253.99), in the real property above noted and said real property has a fair market value of TWO HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$235,000.00), the judicial lien of CITI, impairs the exemption to which the debtors are entitled pursuant to Civil Practice Law and Rules §5206 and Debtor and Creditor Law Article 10 A, but for said lien.

9. Accordingly, pursuant to 11 U.S.C. §522(f)(1) the debtors may void the

lien held by CITI.

**WHEREFORE**, the debtors respectfully request that an Order be entered avoiding the judicial lien held by CITI, pursuant to 11 U.S.C. §522(f)(1); and for such other and further relief as to the Court may seem just and proper.

Dated: Wappingers Falls, New York  
July 27, 2010

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